

2022

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Industrial Relations and Workplace Safety)

Long Service Leave (Portable Schemes) Amendment Bill 2022

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J2022-767

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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(Minister for Industrial Relations and Workplace Safety)

Long Service Leave (Portable Schemes) Amendment Bill 2022

A Bill for

An Act to amend the *Long Service Leave (Portable Schemes) Act 2009*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

- 1 **1 Name of Act**
- 2 This Act is the *Long Service Leave (Portable Schemes) Amendment*
3 *Act 2022*.
- 4 **2 Commencement**
- 5 (1) The following provisions commence on the day after this Act's
6 notification day:
- 7 (a) section 3;
- 8 (b) section 23;
- 9 (c) schedule 1, part 1.2 (Workers Compensation Act 1951).
- 10 *Note* The naming and commencement provisions automatically commence on
11 the notification day (see [Legislation Act](#), s 75 (1)).
- 12 (2) The following provisions commence on the 30th day after this Act's
13 notification day:
- 14 (a) sections 4 to 8;
- 15 (b) section 18;
- 16 (c) sections 20 and 21;
- 17 (d) section 25;
- 18 (e) schedule 1, part 1.1 (Labour Hire Licensing Act 2020).
- 19 (3) The remaining provisions commence 2 years after this Act's
20 notification day.
- 21 **3 Legislation amended**
- 22 This Act amends the *Long Service Leave (Portable Schemes)*
23 *Act 2009*.
- 24 *Note* This Act also amends other legislation (see sch 1).

**4 Who is an employer?
Section 7 (1)**

substitute

(1) A person is an **employer**, for a covered industry, if the person—

(a) engages, in any way and to any extent, in the industry in the ACT; and

(b) either—

(i) employs someone else (whether in the ACT or elsewhere) to carry out work of the kind usually done in the industry; or

(ii) is declared to be an employer for the industry under section 12 (Declarations by Minister—additional coverage of Act).

Note An employer for a covered industry must apply for registration under s 31.

**5 What is work?
Section 11, definition of work, paragraph (a) (ii) and note 2**

omit

cleaning work

substitute

services work

6 Division 8A.1 heading

substitute

Division 8A.1 The authority and governing board

**7 Deputy registrar
Section 79H (1) and notes**

substitute

(1) The registrar must appoint either of the following as deputy registrar for the authority:

- (a) a member of staff of the authority;
- (b) a public servant.

Note 1 The registrar is the chief executive officer of the authority (see dict, def *registrar* and *Financial Management Act 1996*, dict, def *chief executive officer*).

Note 2 For laws about appointments, see the *Legislation Act*, pt 19.3.

8 Section 79J

substitute

Division 8A.1A Staff of the authority

79J Meaning of *staff of the authority*—pt 8A

In this part:

staff of the authority means—

- (a) the registrar; and
- (b) staff employed under section 79JA; and
- (c) consultants engaged under section 79JB.

1 **79JA Employment of staff**

- 2 (1) The registrar may employ staff on behalf of the Territory.
- 3 (2) The staff must be employed under the *Public Sector Management*
- 4 *Act 1994*.

5 *Note* The *Public Sector Management Act 1994*, div 8.2 applies to the registrar

6 as the chief executive officer of the authority in relation to the

7 employment of staff (see *Public Sector Management Act 1994*, s 152).

8 **79JAA Transitional—public servant staff**

- 9 (1) This section applies if, immediately before the commencement day,
- 10 the authority had an arrangement with the head of service to use the
- 11 services of a public servant under section 79J (Arrangements for
- 12 staff) as in force immediately before the commencement day.
- 13 (2) The public servant is taken, on the commencement day, to be a
- 14 member of staff of the authority employed under section 79JA.
- 15 (3) This section expires 2 years after the commencement day.

16 *Note* A transitional provision is repealed on its expiry but continues to have

17 effect after its repeal (see *Legislation Act*, s 88).

- 18 (4) In this section:

19 *commencement day* means the day the *Long Service Leave (Portable*

20 *Schemes) Amendment Act 2022*, section 8 commences.

21 **79JB Consultants**

- 22 (1) The authority may engage consultants on behalf of the Territory.
- 23 (2) Consultants may be engaged on terms and conditions decided by the
- 24 authority.
- 25 (3) However, the authority must not enter into a contract of employment
- 26 under this section.

1 **79JC Delegation by registrar**

2 The registrar may delegate the registrar's functions under this Act or
3 another territory law to—

- 4 (a) a member of staff of the authority; or
5 (b) a public servant.

6 *Note* For laws about delegations, see the [Legislation Act](#), pt 19.4.

7 **79JD Other arrangements for staff and facilities**

8 The authority may arrange with the head of service to use—

- 9 (a) the services of a public servant; or
10 (b) territory facilities.

11 *Note* The head of service may delegate powers in relation to the management
12 of public servants to a public servant or another person (see [Public Sector](#)
13 [Management Act 1994](#), s 18).

14 **9 Transitional—entitlement to payment instead of leave**
15 **New section 97A (3)**

16 *insert*

17 (3) In this section:

18 *contract cleaning industry*—see the pre-amendment Act, schedule 2,
19 section 2.1.

20 *pre-amendment Act* means this Act as in force immediately before
21 the commencement of this section.

10 New section 97B*insert***97B Transitional—entitlement to payment instead of leave for person who became registered worker on or after 1 July 2012**

(1) This section applies to a person who became a registered worker in the contract cleaning industry on or after 1 July 2012 but before the commencement of this section.

(2) Schedule 2, section 2.8, as in force immediately before the commencement of this section, continues to apply in relation to the person.

(3) In this section:

contract cleaning industry—see the pre-amendment Act, schedule 2, section 2.1.

pre-amendment Act means this Act as in force immediately before the commencement of this section.

11 New part 12*insert***Part 12 Transitional—contract cleaning industry****110 Definitions—pt 12**

In this part:

commencement day means the day the *Long Service Leave (Portable Schemes) Amendment Act 2022*, section 13 commences.

1 *contract cleaning industry*—see the pre-amendment Act, schedule 2,
2 section 2.1.

3 *pre-amendment Act* means this Act as in force immediately before
4 the commencement day.

5 **111 Registered employers and workers**

6 (1) A person who is a registered employer in the contract cleaning
7 industry under the pre-amendment Act is, on the commencement day,
8 taken to be a registered employer in the services industry.

9 (2) A person who is a registered worker in the contract cleaning industry
10 under the pre-amendment Act is, on the commencement day, taken to
11 be a registered worker in the services industry.

12 **112 Applications for registration**

13 (1) An application for registration as an employer for the contract
14 cleaning industry made under the pre-amendment Act, section 31 but
15 not decided immediately before the commencement day is, on the
16 commencement day, taken to be an application for registration as an
17 employer for the services industry.

18 (2) An application for registration as a worker for the contract cleaning
19 industry made under the pre-amendment Act, section 40 but not
20 decided immediately before the commencement day is, on the
21 commencement day, taken to be an application for registration as a
22 worker for the services industry.

23 (3) An application for registration of an employee as a worker for the
24 contract cleaning industry made under the pre-amendment Act,
25 section 41 but not decided immediately before the commencement
26 day is, on the commencement day, taken to be an application for
27 registration of the employee as a worker for the services industry.

1 **113 Service credit**

- 2 (1) An employee in the contract cleaning industry who is entitled, under
3 the pre-amendment Act, section 47 to credit for service for work done
4 in that industry is, on or after the commencement day, entitled under
5 section 47 to equivalent credit for service in the service industry for
6 that work.
- 7 (2) Credit for service, received under the pre-amendment Act, section 47,
8 for work done in the contract cleaning industry is, on or after the
9 commencement day, taken to be credit for service received under
10 section 47 for work done in the service industry.

11 **114 Transitional regulations**

- 12 (1) A regulation may prescribe transitional matters necessary or
13 convenient to be prescribed because of the enactment of the *Long*
14 *Service Leave (Portable Schemes) Amendment Act 2022*.
- 15 (2) A regulation may modify this part (including in relation to another
16 territory law) to make provision in relation to anything that, in the
17 Executive's opinion, is not, or is not adequately or appropriately,
18 dealt with in this part.
- 19 (3) A regulation under subsection (2) has effect despite anything
20 elsewhere in this Act or another territory law.

21 *Note* A transitional provision under s (1) continues to have effect after its
22 repeal, however, a modification under s (2) has no ongoing effect after its
23 repeal (see [Legislation Act](#), s 88).

24 **115 Expiry—pt 12**

25 This part expires 5 years after the commencement day.

26 *Note* A transitional provision is repealed on its expiry but continues to have
27 effect after its repeal (see [Legislation Act](#), s 88).

12 What is the *building and construction industry*?
Schedule 1, section 1.1 (1) (b), except note

substitute

- (b) in relation to a reciprocating State—an industry of a kind mentioned in paragraph (a) to which a corresponding law of the State applies.

13 Schedule 2, sections 2.1 and 2.2

substitute

2.1 What is the *services industry*?

- (1) The *services industry* is—

- (a) in relation to the ACT—any of the following industries:

(i) the industry in which employers provide cleaning work to other people through the provision of workers' services (the *cleaning services industry*);

(ii) the industry that provides hairdressing or beauty services within the meaning of the ANZSIC, Division S, Class 9511, Hairdressing and Beauty Services (the *hairdressing and beauty services industry*);

(iii) the industry that provides accommodation, food, beverage and hospitality services within the meaning of the ANZSIC, Division H, Accommodation and Food Services (the *accommodation and food services industry*); and

- (b) in relation to a reciprocating State—an industry of a kind mentioned in paragraph (a) to which a corresponding law of the State applies.

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

(2) In this section:

ANZSIC means the Australian and New Zealand Standard Industrial Classification 2006 as in force from time to time.

Note The ANZSIC is available free of charge at www.abs.gov.au.

2.2 What is services work?

(1) In this Act:

services work means—

(a) in relation to the cleaning services industry—

(i) work that has, as its only or main component, bringing premises into, or maintaining premises in, a clean condition; or

(ii) the collection or sorting of waste at, or for, an identified waste management facility if the employer providing the work through the provision of services does so under a contract with the Territory; and

(b) in relation to the hairdressing and beauty services industry—providing hairdressing services or providing beauty services (including nail care services, facials or applying make-up); and

(c) in relation to the accommodation and food services industry—providing short-term accommodation for visitors, or meals, snacks, and beverages for consumption by customers (whether at the provider's principal place of business or elsewhere).

Note 1 The Minister may declare work or an activity to be services work (see s 12 (2) (d)) or to not be services work (see s 13 (2) (d)).

Note 2 For s (1) (b), medical skin care services such as cosmetic surgery and dermatology services and medical or surgical hair replacement or transplant services are excluded from the ANZSIC, Division S, Class 9511.

14 (5) In this section:

19 *hairdressing and beauty services industry*—see
20 section 2.1 (1) (a) (ii).

26 services work

- 1 **15** Leave payments for service as registered employee—
 2 contract cleaning industry
 3 Schedule 2, section 2.12 (2), definition of *R*,
 4 paragraph (b), example
- 5 *omit*
 6 cleaning industry
- 7 *substitute*
 8 services industry
- 9 **16** Leave payments for service as registered voluntary
 10 member—contract cleaning industry
 11 Schedule 2, section 2.13 (3) (a)
- 12 *omit*
 13 contract cleaning scheme industry funds
- 14 *substitute*
 15 services industry scheme funds
- 16 **17** What is the *community sector industry*?
 17 Schedule 3, section 3.1 (1) (b) and note
- 18 *substitute*
- 19 (b) in relation to a reciprocating State—an industry of a kind
 20 mentioned in paragraph (a) to which a corresponding law of the
 21 State applies.
- 22 *Note 1* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).
- 23 *Note 2* The definition of *community sector industry* was broadened to include
 24 residential aged care services and community aged care services with
 25 effect from 1 July 2016.

18 Entitlement to payment instead of leave—community sector industry
Schedule 3, section 3.9 (1)

substitute

(1) This section applies to a registered worker for the community sector industry if the worker has 5 years recognised service and—

(a) all of the following apply:

(i) the worker has permanently left the industry;

(ii) 20 weeks have passed since the day the worker permanently left the industry;

(iii) the worker has not been credited with service in the workers register for any of the days in the 20-week period;
or

(b) any of the following apply:

(i) the worker has left the industry because of total incapacity;

(ii) the worker has reached the prescribed retiring age;

(iii) the worker has died.

19 What is the *security industry*?
Schedule 4, section 4.1 (1) (b), except note

substitute

(b) in relation to a reciprocating State—an industry of a kind mentioned in paragraph (a) to which a corresponding law of the State applies.

**20 Schedule 4, section 4.1 (2), definition of *security activity*,
new note**

insert

Note Stated people, including a custodial officer and a police officer, are exempt from the application of the [Security Industry Act 2003](#) (see that [Act](#), s 9 and [Security Industry Regulation 2003](#), s 6 (1)). Those stated people are not undertaking a security activity for the purposes of this Act.

**21 Entitlement to payment instead of leave—security
industry
Schedule 4, section 4.9 (1)**

substitute

(1) This section applies to a registered worker for the security industry if the worker has 5 years recognised service and—

(a) all of the following apply:

(i) the worker has permanently left the industry;

(ii) 20 weeks have passed since the day the worker permanently left the industry;

(iii) the worker has not been credited with service in the workers register for any of the days in the 20-week period;
or

(b) any of the following apply:

(i) the worker has left the industry because of total incapacity;

(ii) the worker has reached the prescribed retiring age;

(iii) the worker has died.

- 1 **22 Dictionary, definitions of *cleaning work* and *contract***
2 ***cleaning industry***
- 3 *omit*
- 4 **23 Dictionary, new definitions**
- 5 *insert*
- 6 *registered employee* means an employee who is a registered worker.
- 7 *registered voluntary member* means a voluntary member who is a
8 registered worker.
- 9 **24 Dictionary, new definitions**
- 10 *insert*
- 11 *services industry*—see schedule 2, section 2.1.
- 12 *services work*—see schedule 2, section 2.2.
- 13 **25 Dictionary, new definition of *staff of the authority***
- 14 *insert*
- 15 *staff of the authority*, for part 8A (Administration)—see section 79J.

26 Further amendments, mentions of *contract cleaning industry*

omit

contract cleaning industry

substitute

services industry

in

- section 6
- section 47 (3), example
- section 65 (3) (b)
- schedule 2 heading
- schedule 2, sections 2.3 to 2.18
- dictionary, definition of *covered industry schedule*, paragraph (b)
- dictionary, definition of *long service leave formula*, paragraph (b)
- dictionary, definition of *recognised service*, paragraph (b)
- dictionary, definition of *service period*, paragraph (b)

1 **Schedule 1 Other amendments**

2 (see s 3)

3 **Part 1.1 Labour Hire Licensing Act 2020**

4 **[1.1] Sections 47 and 48**

5 *omit*

6 director-general

7 *substitute*

8 commissioner

9 **[1.2] Section 49 heading**

10 *substitute*

11 **49 Authorised person must show identity card on exercising**
12 **power**

13 **Part 1.2 Workers Compensation Act 1951**

14 **[1.3] Schedule 3, sections 3.4 (1) (b), 3.6, 3.7 and 3.16 (a)**

15 *omit*

16 regulator

17 *substitute*

18 director-general

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 22 November 2022.

2 Notification

Notified under the [Legislation Act](#) on 2022.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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